

CHAPTER 305

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 19-1232

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AN ACT**CONCERNING THE ALIGNMENT OF COMPLIANCE WITH THE FEDERAL "INDIAN CHILD WELFARE ACT".**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly finds that the bureau of Indian affairs in the United States department of the interior published updated regulations regarding the implementation of the federal "Indian Child Welfare Act" (ICWA) in 2016, codified at 25 CFR 23. The general assembly therefore declares that it is a matter of statewide importance to align Colorado's statute with the updated ICWA regulations to ensure continuing compliance with federal law.

SECTION 2. In Colorado Revised Statutes, **amend** 19-1-126 as follows:

19-1-126. Compliance with the federal "Indian Child Welfare Act".

(1) ~~Commencing thirty days after May 30, 2002,~~ IN EACH CASE FILED PURSUANT TO THIS TITLE 19 THAT CONSTITUTES A CHILD CUSTODY PROCEEDING, AS DEFINED IN THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ., AND THEREFORE TO WHICH THE TERMS OF THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ., APPLY, THE COURT AND EACH PARTY TO THE PROCEEDING SHALL COMPLY WITH THE FEDERAL IMPLEMENTING REGULATIONS, AND ANY MODIFICATIONS THEREOF, OF THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ., LOCATED IN 25 CFR 23, WHICH OUTLINE THE MINIMUM FEDERAL STANDARDS GOVERNING THE IMPLEMENTATION OF THE "INDIAN CHILD WELFARE ACT" TO ENSURE THE STATUTE IS APPLIED IN COLORADO CONSISTENT WITH THE ACT'S EXPRESS LANGUAGE, CONGRESS'S INTENT IN ENACTING THE STATUTE,

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

AND TO PROMOTE THE STABILITY AND SECURITY OF INDIAN CHILDREN, TRIBES, AND FAMILIES. In each case CHILD-CUSTODY PROCEEDING filed pursuant to this title TITLE 19 to which the terms of the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq., apply: ~~including but not limited to certain juvenile delinquency proceedings, dependency or neglect proceedings, termination of parental rights proceedings, and pre-adoptive and adoption proceedings, the petitioning or filing party shall:~~

(a) (I) ~~Make continuing~~ THE COURT SHALL MAKE inquiries to determine whether the child who is the subject of the proceeding is an Indian child, and, if so, shall determine the identity of the Indian child's tribe. IN DETERMINING THE INDIAN CHILD'S TRIBE:

(A) THE COURT SHALL ASK EACH PARTICIPANT IN AN EMERGENCY OR VOLUNTARY OR INVOLUNTARY CHILD-CUSTODY PROCEEDING WHETHER THE PARTICIPANT KNOWS OR HAS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD. THE INQUIRY IS TO BE MADE AT THE COMMENCEMENT OF THE PROCEEDING, AND ALL RESPONSES MUST BE ON THE RECORD. THE COURT SHALL INSTRUCT THE PARTICIPANTS TO INFORM THE COURT IF ANY PARTICIPANT SUBSEQUENTLY RECEIVES INFORMATION THAT PROVIDES REASON TO KNOW THE CHILD IS AN INDIAN CHILD.

(B) ANY PARTY TO THE PROCEEDING SHALL DISCLOSE ANY INFORMATION INDICATING THAT THE CHILD IS AN INDIAN CHILD OR PROVIDE AN IDENTIFICATION CARD INDICATING MEMBERSHIP IN A TRIBE TO THE PETITIONING AND FILING PARTIES AND THE COURT IN A TIMELY MANNER. THE COURT SHALL ORDER THE PARTY TO PROVIDE THE INFORMATION NO LATER THAN SEVEN BUSINESS DAYS AFTER THE DATE OF THE HEARING OR PRIOR TO THE NEXT HEARING ON THE MATTER, WHICHEVER OCCURS FIRST. THE INFORMATION SHOULD BE FILED WITH THE COURT AND PROVIDED TO THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES AND EACH PARTY NO LATER THAN SEVEN BUSINESS DAYS AFTER THE DATE OF THE HEARING.

(II) THE COURT, UPON CONDUCTING THE INQUIRY DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION, HAS REASON TO KNOW THAT A CHILD IS AN INDIAN CHILD IF:

(A) ANY PARTICIPANT IN THE CHILD-CUSTODY PROCEEDING, OFFICER OF THE COURT INVOLVED IN THE CHILD-CUSTODY PROCEEDING, INDIAN TRIBE, INDIAN ORGANIZATION, OR AGENCY INFORMS THE COURT THAT THE CHILD IS AN INDIAN CHILD;

(B) ANY PARTICIPANT IN THE CHILD-CUSTODY PROCEEDING, OFFICER OF THE COURT INVOLVED IN THE CHILD-CUSTODY PROCEEDING, INDIAN TRIBE, INDIAN ORGANIZATION, OR AGENCY INFORMS THE COURT THAT IT HAS DISCOVERED INFORMATION INDICATING THAT THE CHILD IS AN INDIAN CHILD;

(C) THE CHILD WHO IS THE SUBJECT OF THE CHILD-CUSTODY PROCEEDING GIVES THE COURT REASON TO KNOW HE OR SHE IS AN INDIAN CHILD;

(D) THE COURT IS INFORMED THAT THE DOMICILE OR RESIDENCE OF THE CHILD, THE CHILD'S PARENT, OR THE CHILD'S INDIAN CUSTODIAN IS ON A RESERVATION OR IN AN ALASKA NATIVE VILLAGE;

(E) THE COURT IS INFORMED THAT THE CHILD IS OR HAS BEEN A WARD OF A TRIBAL COURT, AS DEFINED IN 25 U.S.C. SEC. 1903; OR

(F) THE COURT IS INFORMED THAT THE CHILD OR THE CHILD'S PARENT POSSESSES AN IDENTIFICATION CARD INDICATING MEMBERSHIP IN AN INDIAN TRIBE.

(b) If the ~~petitioning or filing party~~ COURT KNOWS OR HAS REASON TO BELIEVE KNOW, AS DEFINED IN SUBSECTION (1)(a)(II) OF THIS SECTION, THAT THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD, THE PETITIONING OR FILING PARTY SHALL SEND NOTICE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ~~parent or Indian custodian~~ PARENT OR PARENTS, THE INDIAN CUSTODIAN OR INDIAN CUSTODIANS OF ~~such~~ THE CHILD AND TO THE TRIBAL AGENT OF THE INDIAN CHILD'S TRIBE AS DESIGNATED IN TITLE 25 OF THE CODE OF FEDERAL REGULATIONS, PART 23 25 CFR 23, OR, IF ~~such agent has not been designated, to the highest-elected or highest-appointed official of the Indian child's tribe, to the highest-elected or highest-appointed tribal judge of the Indian child's tribe, and to the social service department of the Indian child's tribe, and~~ THERE IS NO DESIGNATED TRIBAL AGENT, THE PETITIONING OR FILING PARTY SHALL CONTACT THE TRIBE TO BE DIRECTED TO THE APPROPRIATE OFFICE OR INDIVIDUAL. IN PROVIDING NOTICE, THE COURT AND EACH PARTY SHALL COMPLY WITH 25 CFR 23.111.

(c) ~~Disclose~~ THE PETITIONING OR FILING PARTY SHALL DISCLOSE IN THE COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING FILED WITH THE COURT THAT THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD AND THE IDENTITY OF THE INDIAN CHILD'S TRIBE OR WHAT EFFORTS THE PETITIONING OR FILING PARTY HAS MADE IN DETERMINING WHETHER THE CHILD IS AN INDIAN CHILD. IF THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS DETERMINED TO BE AN INDIAN CHILD, THE PETITIONING OR FILING PARTY SHALL FURTHER IDENTIFY WHAT REASONABLE EFFORTS HAVE BEEN MADE TO SEND NOTICE TO THE PERSONS IDENTIFIED IN ~~paragraph (b) of this subsection~~ (1) SUBSECTION (1)(b) OF THIS SECTION. THE POSTAL RECEIPTS INDICATING THAT NOTICE WAS PROPERLY SENT BY ~~such~~ THE PETITIONING OR FILING PARTY TO THE PARENT OR INDIAN CUSTODIAN OF THE INDIAN CHILD AND TO THE INDIAN CHILD'S TRIBE ~~shall~~ MUST BE ATTACHED TO THE COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING FILED WITH THE COURT; EXCEPT THAT, IF NOTIFICATION HAS NOT BEEN PERFECTED AT THE TIME THE INITIAL COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING IS FILED WITH THE COURT OR IF THE POSTAL RECEIPTS HAVE NOT BEEN RECEIVED BACK FROM THE POST OFFICE, THE PETITIONING OR FILING PARTY SHALL ~~identify such circumstances to the court and shall thereafter~~ FILE THE POSTAL RECEIPTS WITH THE COURT. ~~within ten days after the filing of the complaint, petition, or other commencing pleading~~ ANY RESPONSES SENT BY THE TRIBAL AGENTS TO THE PETITIONING OR FILING PARTY, THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES, OR THE COURT MUST BE DISTRIBUTED TO THE PARTIES AND DEPOSITED WITH THE COURT.

(2) ~~In any of the cases identified in subsection (1) of this section in which the initial complaint, petition, or other commencing pleading does not disclose whether the child who is the subject of the proceeding is an Indian child, the court shall inquire of the parties at the first hearing whether the child is an Indian child and, if so, whether the parties have complied with the procedural requirements set forth in the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq. If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall:~~

(a) CONFIRM, BY WAY OF A REPORT, DECLARATION, OR TESTIMONY INCLUDED IN THE RECORD, THAT THE PETITIONING OR FILING PARTY USED DUE DILIGENCE TO IDENTIFY AND WORK WITH ALL OF THE TRIBES OF WHICH THERE IS REASON TO KNOW THE CHILD MAY BE A MEMBER, OR ELIGIBLE FOR MEMBERSHIP, TO VERIFY WHETHER THE CHILD IS IN FACT A MEMBER, OR A BIOLOGICAL PARENT IS A MEMBER AND THE CHILD IS ELIGIBLE FOR MEMBERSHIP; AND

(b) TREAT THE CHILD AS AN INDIAN CHILD, UNLESS AND UNTIL IT IS DETERMINED ON THE RECORD THAT THE CHILD DOES NOT MEET THE DEFINITION OF AN INDIAN CHILD.

~~(3) The state department of human services and the county departments of human or social services are encouraged to work cooperatively in the sharing of information that any of such agencies obtains or receives concerning any federally recognized tribal entities existing outside the state of Colorado, including but not limited to information about the appropriate person from a tribal entity to contact with the notice prescribed by this section~~ IF THE COURT RECEIVES INFORMATION THAT THE CHILD MAY HAVE INDIAN HERITAGE BUT DOES NOT HAVE SUFFICIENT INFORMATION TO DETERMINE THAT THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD PURSUANT TO SUBSECTION (1)(a)(II) OF THIS SECTION, THE COURT SHALL DIRECT THE PETITIONING OR FILING PARTY TO EXERCISE DUE DILIGENCE IN GATHERING ADDITIONAL INFORMATION THAT WOULD ASSIST THE COURT IN DETERMINING WHETHER THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD. THE COURT SHALL DIRECT THE PETITIONING OR FILING PARTY TO MAKE A RECORD OF THE EFFORT TAKEN TO DETERMINE WHETHER OR NOT THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD.

~~(4) (a) In any of the cases identified in subsection (1) of this section involving an Indian child, in determining whether to transfer such a case to a tribal court, the court is encouraged to consider the following guidelines:~~

~~(i) The court may find that good cause exists to deny a transfer of the proceeding to the tribal court if the Indian child's tribe does not have a tribal court; or~~

~~(ii) The court may find that good cause exists to deny a transfer of the proceeding to the tribal court if:~~

~~(A) Either of the Indian child's parents objects to such a transfer; or~~

~~(B) The proceeding was at an advanced stage when the petition to transfer the proceeding to the tribal court was received from the Indian child's tribe and the petitioning party did not file the petition to transfer to the tribal court promptly after receiving the notice of hearing.~~

~~(b) The burden of proof under this subsection (4) shall be on the party opposing a transfer of the case~~ IF THE COURT FINDS THAT THE CHILD IS AN INDIAN CHILD, THE COURT SHALL ENSURE COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 28, 2019